

REMARKS

In the Office Action of April 3, 2003, the Examiner has maintained his rejection under 35 U.S.C. §102 as being anticipated by *Wolfe et al.*

*Wolfe et al.* (U.S. Patent No. 6,282,517)

*Wolfe et al.* describes the autobytel e-commerce communication network which enables individual auto dealers to advertise their cars at one website. To this end, sellers (automobile dealers) transmit inventory information, such as vehicle models and characteristics, to a central network. Buyers are able to access this inventory online by contacting the central network, such as by accessing [www.autobytel.com](http://www.autobytel.com).

If a buyer sees a product to their liking, they place a "purchase request" which is transmitted to the central network. The purchase request is then forwarded to the individual seller for consideration. As recognized by the Examiner in his most recent Office Action, the purchase request may be transmitted to the seller by numerous vehicles, such as e-mail, pager, telephone message or the like. However, this reference does not suggest two-way real-time communications between a buyer and seller as claimed by Applicant.

Applicant's "Real Time" Interactive System for Negotiating the Purchase and Sale of Goods or Services

Applicant's claimed invention is directed to a computer network including a host processor which connects buyers and sellers through remote computer terminals. Somewhat like the autobytel system, the inventory of respective sellers is recorded in each seller's computer terminal and transmitted continuously or periodically to the host processor system to create a database of inventory of all goods or services offered by sellers connected to the network. Also similar to the autobytel system, a buyer connecting to the network transmits transaction related information such as an identification of goods sought to enable the host processor to automatically match potential buyers with potential sellers.

Unlike the autobytel system, Applicant's claimed invention does not simply transmit a purchase request from the buyer to the seller. Instead, Applicant's invention provides a two-way "real time" connection between the buyer and seller. As reflected in Claims 1 - 10 and 21 - 27, Applicant's invention preferably includes two "real time" two-way connections. A first data connection is provided for providing real time two-way communication between the buyer and seller for enabling the buyer and seller to communicate by immediate written messaging. As claimed, the invention also provides a real time two-way speech connection for enabling buyers and sellers to speak with one another in real time to negotiate and complete the sale of goods or services.

With reference to Claims 11 and 28 and their dependent claims, a two-way real-time communication connection is provided between a buyer and seller. In addition, Applicant's interconnected computer network system includes both "primary" sellers and "virtual" sellers of goods and services. As clarified in the amendments in Claims 11 and 28, the virtual sellers are distinct from the primary sellers and are provided to sell the goods of another.

The Differences Between the Autobytel System  
Disclosed in *Wolfe et al.* and Applicant's Invention

There are numerous elements of Applicant's claimed invention that are nowhere suggested in the *Wolfe et al.* reference.

Specifically, every one of the claims include the limitation that the host processor provides a real time two-way communication connection between the buyer and seller. This feature is absolutely not suggested in the *Wolfe et al.* reference. Instead, *Wolfe et al.* merely discloses the transmission of messages to be sent to a seller, which a seller can respond to, such as by accepting a purchase request.

In rejecting the claims, the Examiner has selected an extremely confusing definition for the term "real time" and has strangely and erroneously interpreted the definition so broadly that it would include communications by stone tablet placed and opened years later from a tomb. However, Applicant intends the term "real time" to mean exactly what most,

if not all, persons would understand the term to mean. Adopting the term as defined in *Newton's Telecom Dictionary*, for purposes of the present invention, the term "real time" means:

A voice telephone conversation is conducted in real time. That is, there is no perceived delay in the transmission of the voice message or in the response to it. This concept often applies to interaction between a computer and a terminal. In data processing or data communications, real time means the data is processed the moment it enters a computer, as opposed to BATCH processing where the information enters the system, is stored and is operated on a later time. *Newton's Telecom Dictionary*, 15<sup>th</sup> Edition, 1999.

See also definition for "real time chat":

A program allowing live conversation between individuals by typing on a computer terminal.

The foregoing definition for "real time" is the ordinary meaning to those skilled in the art, and it is adopted by the Applicant. See *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995) (a patentee is free to be his own lexicographer). Also see *Senmed, Inc. v. Richard-Allen Medical Industries, Inc.*, 888 F.2d 815 (Fed. Cir. 1989) reflecting that a claim term's meaning may be garnered from review of the prosecution history.

This definition for "real time" is clearly supported within the specification of the present application. However, the autobytel *Wolfe et al.* reference does not disclose or remotely suggest any type of "real time" two-way communication between a buyer and a seller. Simply, the leaving of a message by an e-mail, page, or telephone message, is

neither two-way, nor in real time as defined above. Since all of the claims of the present application include this limitation, which is not disclosed or suggested in the prior art, Applicant's claims are believed allowable.

Moreover, each of the claims include additional basis for allowability. For example, Claims 1 - 10 and 21 - 27 include the additional limitation that **two (2)** real time two-way communication connections are provided, including a first two-way data connection and a second two-way speech connection. Simply, *Wolfe et al.* does not disclose or suggest any type of real time two-way speech connection. Contrary to the Examiner's strange interpretation, the leaving of a phone message, could not be construed as a real time two-way speech connection let alone two (2) real-time two-way connections.

Meanwhile, Claims 11 - 20 and 28 - 36 include the limitation that the network system of the present invention includes both "primary" sellers and "virtual" sellers. As clarified by the amendments, the virtual seller is not the same as a primary seller. However, the virtual seller is capable, under certain circumstances, of selling the primary seller's goods or services. Conversely, and as appeared to have been admitted by the Examiner in his recent Office Action, the autobytel system does not provide any sort of suggestion that a seller's goods can be sold by anybody but the actual seller of the goods.

Wolfe teaches seller A's computer screen may be immediately refreshed to reflect the newly created purchase request. In another embodiment, seller A may be notified via communication mechanisms such as e-mail, page, telephone message, or the like. Thus the dealer may appropriately act on the purchase request upon its submission. (Examiner's argument at page 4, paragraph 2).

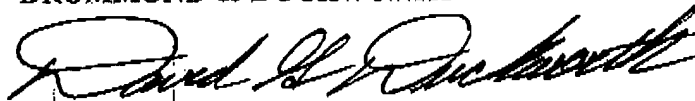
Thus, the Examiner's argument seems to reinforce that the *Wolfe et al.* reference teaches that a dealer, and a dealer only, acts on a purchase request. However, *Wolfe et al.* and the Examiner's argument do not provide any sort of suggestion for providing a "virtual" seller for selling the goods of another. Accordingly, this limitation in Claims 11 - 20 and 28 - 36 is believed to provide still an additional basis for patentability.

### CONCLUSION

The claims are believed to be in condition for allowance and notice thereof is respectfully solicited. If there are any remaining issues that need to be resolved, it is respectfully requested that a telephone call be placed to the undersigned.

Respectfully submitted,

DRUMMOND & DUCKWORTH



David G. Duckworth  
Registration No. 39,516  
Attorneys for Applicant  
Telephone: (949) 724-1255